

**JUN 30 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

LEONID OBOICHUK; IRYNA  
OBOICHUK,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 03-73788

Agency Nos. A75-720-444  
A75-720-445

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 9, 2006<sup>\*\*</sup>

Submission deferred March 30, 2006

Resubmitted June 30, 2006

Pasadena, California

Before: D.W. NELSON and O'SCANNLAIN, Circuit Judges, and JONES<sup>\*\*\*</sup>,  
District Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Robert C. Jones, District Judge for the District of  
Nevada, sitting by designation.

Leonid and Iryna Oboichuk, natives and citizens of Ukraine, petition for review from the Board of Immigration Appeals' ("BIA") summary affirmance without opinion of an immigration judge's ("IJ") denial of their petitions for asylum, withholding of removal, and protection under the Convention Against Torture. The facts and prior proceedings are repeated herein only as necessary.

The Oboichuks claim that the BIA applied an improper standard for determining whether the firm resettlement bar applied to them. *See* 8 C.F.R. § 208.15. In light of our disposition in *Maharaj v. Gonzales*, --- F.3d ----, 2006 WL 1579870 (9th Cir. 2006) (en banc), we agree, and remand for reconsideration of the firm resettlement bar in light of that opinion. *See id.* at \*10–11.

The government maintains that even if the firm resettlement bar does not apply, the denial of the petition was still proper because the Oboichuks do not fear future persecution. We disagree. Because the Oboichuks established past persecution, they are presumed to have a well-founded fear of future persecution. *Khup v. Ashcroft*, 376 F.3d 898, 904 (9th Cir. 2004). We agree with the petitioners that the BIA failed to apply this presumption. We therefore remand for reconsideration of the Oboichuks' petition under the proper standard. *Lopez v. Ashcroft*, 366 F.3d 799, 806 (9th Cir. 2004).

**PETITION FOR REVIEW GRANTED; REMANDED.**